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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,754

12/30/2003

Alexander Gebhart

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9080

22852

7590

05/26/2005

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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EXAMINER

BUI, BRYAN

ART UNIT

PAPER NUMBER

2863

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

2

Office Action Summary	Application No.		Applicant(s)	
	10/749,754		GEBHART, ALEXANDER	
	Examiner		Art Unit	
	Bryan Bui		2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26 is/are allowed.
- 6) ☒ Claim(s) 1,10-15,17-20,22 and 23 is/are rejected.
- 7) ☒ Claim(s) 2-9,16 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17:2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 3 and 5 should be renumbered as claims 3, 4 and 5. Please make correction to identify the present of claim 4. The examiner considers the limitation between claims 3 and 5 as claim 4 to examine.

2. Claim 15 is objected to because of the following informalities: claim 15 is missing transitional phrase. For example "comprising", (see MPEP 2111.03). Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,10-14, 15, 17-19, 20, 22-23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller et al (US 6,256,740). Hereinafter as Muller in view of Bernstein et al (US 6,826,568).

With respect to claims 1, 15, 17, and 20, Muller teaches a plurality of compute nodes in a network maintaining a local store of services (figure 2), the local store of services including at least a service name (column 17, lines 21-37); receiving a request for a service from a client system and indicates the performance of the service for each node in creating a list correspondence in each node (column 3, lines 34-42, column 40, lines 8-17, figure 14). Muller does not disclose a service functionality and statistics defining the performance and compiling a list of compute nodes matching the service request, the list having service names ranked according to the service functionality and statistics for each computer node. Bernstein et al teach a method and system for model matching in network distribution utilize functionality provide by a protocol layer to identify the communication between client and server which provides a compiler for compiling a list of compute nodes matching the service request and schema information matcher using data statistics, the list having service names ranked according to the service functionality and statistics for each computer node (column 3, lines 3-7, column 11, line 52 to column 12, line 12 and column 34, line 54 to column 35, line 21). It would have been obvious to one of ordinary skill in the art to include the teachings of Bernstein et al to modify Muller's technique in order to improve the accuracy in performing corresponding information.

With respect to claims 10-11, Muller teaches displaying list and comprising a graphical user interface (column 17, lines 21-37, column 21, line 55 to column 22, line 34).

With respect claims 12-14, 17-19, 22-23, Muller teaches the list is ranked according to service instantiation (representation) and according to an average service response time and to the error (column 34, lines 35-67).

Allowable Subject Matter

5. Claims 2-9, 16, 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In combination with other limitations, the claims direct to the statistical function to represent the events of services. The prior art does not disclose these limitations.

Claims 24-26 are indicating allowable over the prior art of record because none of the prior art whether taken singularly or in combination to teach the claimed combination as recited, especially in combination with other limitations, requires the statistical functions of the services and updating the statistics in response to the change in the number of the service provided in the claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Bui whose telephone number is 571-272-2271. The examiner can normally be reached on M-Th from 7am-4pm, and Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BB

5/25/2005

BRYAN BUI
PRIMARY EXAMINER

